
(2005) 03 J&K CK 0011
In the Jammu And Kashmir High Court
Case No : CIA No. 91 of 1999

Chief Engineer and Others

APPELLANT

Vs

Mst. Zeba

RESPONDENT

Date of Decision : 11-03-2005

Acts Referred:

Family Courts Act, 1984 — Section 7(2)
Jammu and Kashmir Civil Procedure Code, 1977 — Order 39 Rule 1, Order 39 Rule 2,
151, 94
Motor Vehicles Act, 1988 — Section 140

Citation : (2007) ACJ 412 : (2005) 3 JKJ 38

Hon'ble Judges : Mansoor Ahmad Mir, J

Bench : Single Bench

Advocate : M.A. Beigh, for the Appellant; M.Y. Bhat, for the Respondent

Final Decision : Allowed

Judgement

Mansoor Ahmad Mir, J.—By the medium of this appeal, the appellants have assailed the exparte judgment and decree dated 18.08.1998

passed by Learned District Judge, Budgam in suit titled Mst. Zeba v. State and Ors. file No. 80/numbri.

2. Heard. Learned counsel for the appellant argued that the impugned exparte judgment and decree has been passed illegally because exparte

proceedings drawn against the appellants are illegal.

3. Mr. Bhat learned counsel for the respondent frankly conceded that the exparte proceedings have been drawn illegally. However, Mr. Bhat

prayed that keeping in view the circumstances of the case, the interim compensation may be granted.

4. Perused. Considered.

5. The ex parte proceedings have not been drawn rightly, which is reflected in the interim orders right from 22nd March, 1996 till 27th May, 1997.

In terms of the said orders Mr. Banday, advocate has caused appearance on behalf of the defendants 1 and 2 i.e. appellants 1 and 2 in the suit but

the power of attorney is signed by appellants 4 and 5 (defendants 4 and 5). The summons have also not been issued to appellants 1 to 3 either in

ordinary mode or by registered post. Thus ex parte proceedings drawn against the appellants/defendants 1 to 3 are illegal. Accordingly the

impugned judgment and decree is illegal.

6. Viewed thus the appeal merits to be allowed.

7. Now, the question is whether interim compensation can be granted? It is profitable to give brief resume of the averments contained in the plaint

herein;

8. The defendants have installed 11000 K.W.H. Tension line from village Yachkoot towards village Bugroo and from this line electricity is supplied

to various villages. The poles erected by the defendants exist on the pathway connecting Ichgam and Yachkoot villages. On the said road there is

situated a kitchen garden of one of the villagers, Sabir Bhat, which is fenced with barbed wire. On 1st August, 1994 the high tension electric wire

fell down. The villagers approached the officials for restoring the electricity to the village by re-fixing the supply line. No heed was paid to the

requests of the villagers, with the result neither electric supply was restored nor the electric wire was removed from the spot which had touched the

barbed wire. Plaintiffs son, namely, Mohammad Iqbal Bhat aged 13 years, student of 7th class on 09.08.1998 came in touch with the barbed wire

thereby he got electrocuted which resulted in to his death on spot. The accident has taken place due to the negligence of the Electric Department.

9. Whether the interim compensation can be granted in terms of the Civil Procedure Code? It is necessary to notice Sections 94 and 151 of CPC.

10. While going through the provisions of Section 94 of CPC, this court can pass any order which is just in the given circumstances. But word

prescribed"" is used in the provision which means prescribed by the Rules. While going through the Rules, I have not noticed any Rule which can

be pressed into service for granting of interim compensation.

11. While going through the provisions of Section 151 CPC, this court can

exercise inherent powers in order to do justice in between the parties and can pass such orders which are warranted in the interests of justice.

12. Section 140 of Motor Vehicles Act mandates how to grant interim compensation. This remedy stands introduced in terms of the recommendations made by Apex Court in the judgments reported in 1977 ACJ 134 : 1980 ACJ 435 : 1981 ACJ 507 In terms of the said judgments the legislation was made. The aim and object of the said provision is to save the victims/sufferers from, starvation, destitution and from other social evils. It is just to ameliorate the sufferings of the victims.

13. The Apex court has passed a judgment reported in Shri Bodhisattwa Gautam Vs. Miss Subhra Chakraborty, , wherein their lordships have granted interim compensation to the victims of a rape case. In terms of the said judgment the court is not powerless to come to the rescue of victims and save them from social evils as discussed above. It is profitable to reproduce para-18 of the said judgment herein:-

18. This decision recognizes the right of the victims for compensation by providing that it shall be awarded by the Court on conviction of the offender subject to the finalization of Scheme by the Central Government. If the Court trying an offence of rape has jurisdiction to award the compensation at the final stage, there is no reason to deny to the Court the right to award interim compensation which should also be provided in the Scheme. On the basis of principles set out in the aforesaid decision in Delhi Domestic Working Women's Forum, the jurisdiction to pay interim compensation shall be treated to be part of the overall jurisdiction of the Courts trying the offences of rape which, as pointed out above is an offence against basic human rights as also the Fundamental Right of Personal Liberty and life.

14. The Apex court has also held in the judgment reported in Savitri Rawat Vs. Govind Singh Rawat, that the courts can grant interim maintenance in the proceedings u/s 488 (Section 125 Cr.P.C) Cr.P.C. It is profitable to reproduce relevant portion of para-6 herein:-

...If a civil Court can pass such interim orders on affidavits, there is no reason why a Magistrate should not rely on them for the purpose of issuing directions regarding payment of interim maintenance. The affidavit may be treated as supplying prima facie proof of the case of the applicant. If the

allegations in the application or the affidavit are not true, it is always open to the person against whom such an order is made to show that the order

is unsustainable. Having regard to the nature of the jurisdiction exercised by a Magistrate u/s 125 of the Code, we feel that the said provision

should be interpreted as conferring power by necessary implication on the Magistrate to pass an order directing a person against whom an

application is made under it to pay a reasonable sum by way of interim maintenance subject to the other conditions referred to the pending final

disposal of the application. In taking this view we have also taken note of the provisions of Section 7(2)(a) of the Family Courts Act, 1984) passed

recently by Parliament proposing to transfer the jurisdiction exercisable by Magistrates u/s 125 of the Code to the Family Courts constituted under

the said Act.

15. While going through the said provisions of law and while keeping in view the above discussion, I am of the considered view that civil court can

exercise inherent powers and can grant interim compensation at any stage even though not provided by any other provision of law. It is profitable

to reproduce relevant portion of para-4 of the judgment of Apex Court reported in State of Maharashtra and others Vs. Admane Anita Moti and

others, .

...Interim orders are granted by the Courts as they are necessary to protect the interest of the petitioner till the rights are finally adjudicated upon.

Even where it is not provided in the statute this Court has held that the courts have inherent power to grant it....

16. It is also profitable to reproduce paras-9 and 10 of the Apex Court judgment reported in Vareed Jacob Vs. Sosamma Geevarghese and

Others, herein;

9. In the case of Ram Chand and Sons Sugar Mills Pvt. Ltd. Vs. Kanhaya Lal Bhargava and Others, , it has been held by this Court that the

inherent power of the Court u/s 151, C.P.C. is in addition to and complimentary to the powers expressly conferred under C.P.C., but the power

will not be exercised in conflict with any of the powers expressly or by implication conferred by other provisions of C.P.C. If there is express

provision covering a particular topic, then Section 151, C.P.C. cannot be applied. Therefore, Section 151, C.P.C. recognizes inherent power of

the Court by virtue of its duty to do justice and which inherent power is in addition to and complementary to powers conferred under C.P.C, expressly or by implication.

10. In the case of Jagjit Singh Khanna Vs. Dr. Rakhal Das Mullick and Another, it has been held that temporary injunction may be granted u/s

94(c) only if a case satisfies Order 39, Rule 1 and Rule 2. It is not correct to say that the Court has two powers, one to grant temporary injunction

u/s 94(c) and the other under Order 39. Rule 1 and Rule 2. That Section 94(c), C.P.C shows that the Court may grant a temporary injunction

thereunder only if it is so prescribed by Rule 1 and Rule 2 of Order 39. The Court can also grant temporary injunction in exercise of its inherent

powers u/s 151, but in that case, it does not grant temporary injection under any or the powers conferred by C.P.C, but under powers inherent in

constitution of the Court, which is saved by Section 151, C.P.C.

In terms of the said judgments, the civil court can exercise inherent powers and, grant interim compensation in order to do justice, save victims

from social evils and just to ameliorate their sufferings.

17. Thus I am of the considered view that civil court can grant interim compensation in the cases, where the claimants/plaintiffs have lost their bread

earner, son or daughter due to the negligence of the defendant/s and even in the cases where the plaintiff has sustained injuries due to the

negligence of the defendant/s which has rendered the plaintiff permanently disabled.

18. Now, question is whether interim relief can be granted without any motion?

19. I am of the considered view that interim relief can be granted only after a motion is made. But in the instant case, the parties are in lis from

24.01.1996 and the parties have been relegated back to 24-1-1996. Thus, I deem it proper to exercise inherent powers and grant interim relief in

favour of the petitioners without any motion in the given circumstances of the case but it is just an exception.

20. Now question is, whether prima facie proof is on the file in order to grant interim relief?

21. While going through the contents of the appeal, plaint and documents attached with the plaint, it can be prima facie held that the plaintiff has

lost her son due to electrocution because of the negligence of the appellants

(defendants).

22. Now, the question which needs answer is what amount should be just interim compensation in the given case?

23. In terms of Section 140 of Motor Vehicles Act, an amount of Rs. 50,000/- is to be awarded as interim compensation in death cases and Rs.

25,000/- in permanent disablement cases.

24. Keeping in view the circumstances of this case and the above discussion, an amount of Rs. 50,000/- is just and reasonable amount which can

be granted as interim compensation in this case.

25. Accordingly, an amount of Rs. 50000/- is awarded as interim compensation in favour of the respondent/plaintiff against the

appellants/defendants. The appellants/defendants are directed to deposit the same within one month from today before the court of learned District

Judge, Budgam who shall disburse the same to the plaintiff without any delay. Be it noted that granting of interim compensation shall not be

construed that defendants are liable to pay compensation and shall not prejudice the, rights of the parties in any way or, influence the mind of the

trial court while passing final judgment.

26. The learned Principal District Judge, Budgam is commanded to decide the suit within three months from today in the following manner;-

27. The appellants herein shall file written statement on 25th March, 2005 before the trial court and the Learned Pr. District Judge shall frame

issues after the written statement is filled and provide only five opportunities to the plaintiff for leading evidence and thereafter shall also provide

same number of opportunities to the appellants/defendants and then hear the case and after hearing the case shall pass the final judgment. The

Learned Pr. District Judge, shall list the case once in a week so that the suit can be taken to its logical conclusion within three months.

28. In the given circumstances, the appeal is allowed and impugned judgment and decree is set aside. The parties shall cause appearance in the

trial court on 25.03.2005. Registry to circulate the judgment. Send down the record.